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# UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

# DETROIT POLICE OFFICERS ASSOCIATION

and Cheryl Smith, Marty Bandemer, Paul Stewart, Donna Latouf, Linda Brodin, Bernard Cybulski, Joseph Duncan, Calvin Adkins, Carl Allen, Dwight M. Anding, Rick Arslanian, Alfreda Banks, Tim Barr, Eric Barton, Gerald Beckem, Lisa Belton, John Bennett, Vivian W. Berry, Carol Bolyard, George Braxton III, William Brewster, Latonya Brooks, Joseph L.D. Brown, Antonio Carlisi, Bettie Johnson-Cabbil, Cynthia L. Cheatom, Veronica Chubb, David E. Clarke, Robin Cleaver, Randall Coleman, Rosemary Coleman, Makcia Collier, Adam Cook, Phillip D. Cook, Tawaina Craig, Winston Craig, Patricia Ann Crawford, Justin Dattilio, Andrew Dattol, William Davis, Thomas Lee Denmark, Arthur Dudd, Patricia Duncan, Katrina Duplessis, Jermey Everitt, Michael Fountain, Deborah Gaines, Chris A. Guinn, Ronald W. Haley, Wilburt Hambright, Ronald Hamilton, Marlise Ann Harowski, Charles D. Harthun, Garnett Hatchett, David Hatwood, Mary C. Herrada, Espenola Herron-Gray, Scott Herzog, Robert Holmes, Yolanda D. Hood-Stewart, Brandon R. Hunt, Marcetia Ingram, Celeste Jackson, Edward Jackson, Jr., Michele Jaskulka, Darrell Johnson, Lisa M. Johnson, Greta Jopes, Thomas Kilgore, Sylvester C. Kitchen, Aaron Kraszewski, Brian Kussy, Emmett G. Latimer, II, Ava Lee, Clayburn R. Lewis, David M. Lopez, Joseph Machon, Jeffery Manson, Timothy L. McCabe, Sherry McCain, Wilbur Medley, Craig Miller, Eron Mitchell, Anita Elaine Montgomery, Dennis S. Moore, Leon M. Newell, Mark M. O'Leary, Cynthia Pardon, Charlotte Parker, Animesh Patez, Scott M. Pellerito, Cheryl Peoples-Shelton, Vincent M. Peterson, Juan M. Pizana, William Radatz, Marvin Reed, Johnnie Roggers, Maurice Rudisel, Michael Saffold, Christopher A. Salisbury, Melissa Sanchez, Andrew Sapienza, Richard Schley, Annette Sharp, Thomas Skaggs, Jeffery C. Sklar, Cecilia Smith, Leroy Solomon, Mia M. Spruce, Darren K. Stallworth, Charles E. Staples, II, Marsha A. Sterrett, Clive Stewart, Edward L. Thomas, Melissa Thomas, Saeed Thomas, James Tolbert, Vaughn Thornton, Sr., Melvin Toney, Rickey Townsel, Sr., Robert Trozak, Kathryn Vaughn, Harry Vernon, Mark D. Wallace, Lynette White, Terry E. Wilcox, Sr., Holly Williams, Kenneth J. Williams, Derrick Wilson, Marcia L. Wimbush, James Woodside, Alonzo Young and Douglas Yurmanovic,

Plaintiffs,

v.

Case: 2:08-cv-12064
Judge: Steeh, George Caram
MJ: Pepe, Steven D
Filed: 05-09-2008 At 03:49 PM
CMP DETROIT POLICE OFFICERS ASSOC.,
ET AL V. CITY OF DETROIT POLICE DEPT

CITY OF DETROIT (POLICE DEPARTMENT),

Defendant.

GREGORY, MOORE, JEAKLE,
HEINEN & BROOKS, P.C.
BY: Scott A. Brooks (P35773)
Attorneys for Plaintiffs
65 Cadillac Square, Suite 3727
Detroit, MI 48226
(313) 964-5600
scott@unionlaw.net

#### **COMPLAINT**

The Detroit Police Officers Association ("DPOA) and Cheryl Smith, Marty Bandemer, Paul Stewart, Donna Latouf, Linda Brodin, Bernard Cybulski, Joseph Duncan, Calvin Adkins, Carl Allen, Dwight M. Anding, Rick Arslanian, Alfreda Banks, Tim Barr, Eric Barton, Gerald Beckem, Lisa Belton, John Bennett, Vivian W. Berry, Carol Bolyard, George Braxton III, William Brewster, Latonya Brooks, Joseph L.D. Brown, Bettie Johnson-Cabbil, Antonio Carlisi, Cynthia L. Cheatom, Veronica Chubb, David E. Clarke, Robin Cleaver, Randall Coleman, Rosemary Coleman, Makcia Collier, Adam Cook, Phillip D. Cook, Tawaina Craig, Winston Craig, Patricia Ann Crawford, Justin Dattilio, Andrew Dattol, William Davis, Thomas Lee Denmark, Arthur Dudd, Patricia Duncan, Katrina Duplessis, Jeremy Everitt, Michael Fountain, Deborah Gaines, Chris A. Guinn, Ronald W. Haley, Wilburt Hambright, Ronald Hamilton, Marlise Ann Harowski, Charles D. Harthun, Garnett Hatchett, David Hatwood, Mary C. Herrada, Espenola Herron-Gray, Scott Herzog, Robert Holmes, Yolanda D. Hood-Stewart, Brandon R. Hunt, Marcetia Ingram, Celeste Jackson, Edward Jackson, Jr., Michele Jaskulka, Darrell Johnson, Lisa M. Johnson, Greta Jopes, Thomas Kilgore, Sylvester C. Kitchen, Aaron Kraszewski, Brian Kussy, Emmett G. Latimer, II, Ava Lee, Clayburn R. Lewis, David M. Lopez, Joseph Machon, Jeffery Manson, Timothy L. McCabe, Sherry McCain, Wilbur Medley, Craig

Miller, Eron Mitchell, Anita Elaine Montgomery, Dennis S. Moore, Leon M. Newell, Mark M. O'Leary, Cynthia Pardon, Charlotte Parker, Animesh Patez, Scott M. Pellerito, Cheryl Peoples-Shelton, Vincent M. Peterson, Juan M. Pizana, William Radatz, Marvin Reed, Johnnie Roggers, Maurice Rudisel, Michael Saffold, Christopher A. Salisbury, Melissa Sanchez, Andrew Sapienza, Richard Schley, Annette Sharp, Thomas Skaggs, Jeffery C. Sklar, Cecilia Smith, Leroy Solomon, Mia M. Spruce, Darren K. Stallworth, Charles E. Staples, II, Marsha A. Sterrett, Clive Stewart, Edward L. Thomas, Melissa Thomas, Saeed Thomas, James Tolbert, Vaughn Thornton, Sr., Melvin Toney, Rickey Townsel, Sr., Robert Trozak, Kathryn Vaughn, Harry Vernon, Mark D. Wallace, Lynette White, Terry E. Wilcox, Sr., Holly Williams, Kenneth J. Williams, Derrick Wilson, Marcia L. Wimbush, James Woodside, Alonzo Young and Douglas Yurmanovic, individuals, through their counsel, state their Complaint as follows:

1. This is a complaint for unpaid overtime compensation brought pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. Section 201 et seq. Plaintiffs bring this action for a declaratory judgment, overtime compensation, liquidated damages and other appropriate relief. Plaintiffs bring this action on behalf of themselves and other similarly situated individuals employed as police officers by the City of Detroit (Police Department).

#### Jurisdiction and Venue

- 2. Jurisdiction is vested in this Court pursuant to 29 U.S.C. Section 216(b) and 28 U.S.C. §§ 1331 and 1337.
  - 3. Venue is appropriate pursuant to 28 U.S.C. §1391(b).

#### **Parties**

4. Plaintiffs Cheryl Smith, Marty Bandemer, Paul Stewart, Donna Latouf, Linda Brodin, Bernard Cybulski, Joseph Duncan, Calvin Adkins, Carl Allen, Dwight M. Anding, Rick Arslanian, Alfreda Banks, Tim Barr, Eric Barton, Gerald Beckem, Lisa Belton, John Bennett,

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meaning of FLSA §203(e), 29 U.S.C. 203(e). Each Plaintiff has consented to become a member of this action pursuant to FLSA §216(b), 29 U.S.C. §216(b). See attachments. (Plaintiffs identified within this Paragraph are referred hereinafter collectively as "Plaintiff Employees".)

- 5. Plaintiff DPOA is an incorporated labor organization with its principal place of business in Detroit, Wayne, County, Michigan. It is the exclusive bargaining representative for Police Officers below the rank of Investigator employed by Defendant City of Detroit.
- 6. Defendant City of Detroit is an employer as that term is defined in FLSA §203(d), 29 U.S.C. § 203(d).

#### Factual Background

- 7. Plaintiff Employees are employed subject to the terms of a Collective Bargaining Agreement ("CBA") entered into between Plaintiff DPOA and Defendant City of Detroit. That Agreement is attached as Exhibit 1.
  - 8. Each employee Plaintiff has a regular scheduled 40 hour work week.
- 9. Each employee Plaintiff is permitted by Defendant City of Detroit to, and has worked, overtime.
- 10. Each employee Plaintiff is entitled to overtime compensation at time and one-half for all hours worked over eight in a single work day. CBA Article 14(B)(1).
- 11. Each employee Plaintiff is entitled to overtime compensation at time and one-half for all hours worked over forty in a work week.
- 12. Pursuant to the CBA, Article 14(A), all bargaining unit members including each employee Plaintiff are entitled each fiscal year to elect to receive compensatory time instead of cash payment for the first seventy five (75) hours of overtime worked in that fiscal year.

  Compensatory time is credited at the rate of time and one-half.

- 13. Plaintiff Employees and other bargaining unit members who have elected to receive compensatory time instead of cash payment for overtime worked are required to request from their command permission to utilize the accrued compensatory time.
- 14. Plaintiff Employees and other bargaining unit members who have requested to utilize accrued compensatory time have regularly been denied such use.
- 15. At times Defendant City has not identified a reason for denying the request to utilize accrued compensatory time.
- 16. At times Defendant City has denied the request because it did not want to incur overtime costs for another employee to cover the use of compensatory time.
- 17. Section 207(o) of FLSA, 29 U.S.C. 207(o), requires that public employers who permit employees to accrue compensatory time must permit those employees to utilize that time upon request (1) within a reasonable period after the request is made and (2) if the requested use does not unduly disrupt the operation of the public employer.
- 18. The Secretary of Labor has interpreted Section 207(o)'s "unduly burden" exception to mean that the employer shall honor the request unless the employer in good faith anticipates "that it would impose an unreasonable burden on the agency's ability to provide services of acceptable quality and quantity for the public during the time requested without the use of the employee's services." "Mere inconvenience to the employer is an insufficient basis for denial of a request....." 29 C.F.R. §553.25.
- 19. The mere fact that overtime costs may be required for another employee to cover the time requested to be utilized by the employee seeking to use accrued compensatory time is not a sufficient reason for the employer to claim that compensatory request is unduly disruptive. *Beck et. al v. City of Cleveland, Ohio*, 390 F.3d 912 (2005), *cert denied* 545 U.S. 1128.

- 20. Defendant City of Detroit has denied requests to use accrued compensatory time made by Plaintiff Employees and other unit employees represented by Plaintiff DPOA without a good faith basis that it anticipates that it would impose an unreasonable burden on the Defendant City of Detroit's ability to provide services of acceptable quality and quantity for the public during the time requested without the use of the employee's services.
  - 21. The actions of Defendant City of Detroit as described above are ongoing.

#### Cause of Action

22. Defendant City of Detroit has and continues to violation the FLSA by failing and refusing in a willful and intentional manner to provide Plaintiff Employees and other similarly situation employees represented by Plaintiff DPOA the overtime compensation due them under the FLSA and its implementing regulations..

**WHEREFORE**, Plaintiff DPOA and Plaintiff Employees respectfully request that this Court:

- A. Enter a declaratory judgment that Defendant City of Detroit has willfully and wrongfully violated its statutory obligations and deprived Plaintiff Employees and other members of the bargaining unit of their entitlement under the FLSA, as alleged herein;
- B. Order Defendant City of Detroit to make a complete and accurate accounting of all FLSA time due to each Plaintiff and other members of the bargaining unit that was illegally denied them;
- C. Enter a judgment under the FLSA against Defendant City of Detroit for all sums found due to each Plaintiff and as appropriate other members of the bargaining unit;
- D. Award each Plaintiff and as appropriate other members of the bargaining unit liquidated damages equal to their unpaid FLSA compensation, plus interest;

- E. Order that Defendant City of Detroit pay Plaintiffs reasonable attorney fees and costs;
- F. Grant such other relief as may be just and proper.

Respectfully submitted,

Gregory, Moore, Jeakle, Heinen & Brooks, P.C.

By Scott A. Brooks (P35773)

65 Cadillac Square, Suite 3727

Detroit, MI 48226 (313) 964-5600

Dated: May 9, 2008

I am (or was) an employee of the Detroit Police Department. I believe that my rights to proper compensation under the Fair Labor Standards Act (FLSA) may have been violated by my employer. Therefore, I consent to becoming a party plaintiff, pursuant to the FLSA, in a lawsuit against my employer.

I authorize, the law firm of Gregory, Moore, Jeakle, Heinen and Brooks, P.C., including but not limited to attorney Scott A. Brooks, 65 Cadillac Square, Suite 3727, Detroit, Michigan 48226 to represent me as counsel with respect to all claims under the FLSA, and other related laws which I have or may have against my employer. The authorization includes both an investigation of the validity of claims and any resulting litigation concerning such claims. The attorney(s) are authorized to file this consent on my behalf in an appropriate court and to take all steps pertinent thereto on my behalf, including, the filing of complaints, amended complaints, and other pleadings, and the settlement and collection of any and all such claims.

I hereby request that the court assess any, costs and expenses of this action and reasonable attorneys' fees against my employer, and award said costs, expenses and fees to my above—named counsel.

I understand that under the FLSA I cannot be discharged or in any way disciplined or penalized by my employer or its agents because of my participation in an FLSA lawsuit or because of my assertion of rights under the FLSA.

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Date:Ma	ıy 2,	2008			

Name (printed	): Cheryl L. Sm	nith	
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Assianment:	Communications	Operation	Soction

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Date:	5/9/08		

Name (printed):	Martin Dand	emer	
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Assignment:	Northeast Dist.	D. R.O. A	President.

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PLEASE PRINT CLEARLY
Name (printed): HAVE N. STEWART
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Date: May 5, 2108
PLEASE PRINT CLEARLY
Name (printed): Linda Beodew
Badge Number: 4889
Assignment: ALD DPUT Greenice Chapter

Signature: <u>Linda Brude</u>

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Name (printed):

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Assignment:

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CLEARLY
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Date:

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Name (printed):

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ALLEN

Operation Section

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Date: 5/7/08	

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Assignment:	

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Signature: Concest

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Name (printed): Rick ARS/ARIAN

Badge Number: 2879

Assignment: Arman Prib Borry

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Date: _	04-24-08	

Name (printed): ALFREDA BANKS	
Badge Number: 3697	
Assignment: NORthwestell District-RePor	Ŧs

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Date:
PLEASE PRINT CLEARLY
Name (printed): Tim BAII
Badge Number: _ <i>QQQ</i>
Assignment: 50)

Signature: Juna M. Ban

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Date: <u>4-24-08</u>	
	PLEASE PRINT CLEARLY
Name (printed):	Barton
Badge Number: <u>/(o &amp; \</u>	
Assignment:	

Signature: Satar

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Oignature.	<u> </u>	
Date:	4-30-08	
		PLEASE PRINT CLEARLY
Name (prin	ted):	der Berten
Badge Nun	nber: $375$	-
	t: <u>Gami</u>	

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Date: _	5	9	9008		
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PLEASE PRINT CLEARLY

Name (printed): LISA R. BELTON

Badge Number: 5052

Assignment: CENTRAL DISTRICT, CLINTON DESK

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Signature: Was K Santth
Date: May 9, 2008
PLEASE PRINT CLEARLY
Name (printed): John K. Bennett
Badge Number: <i>3019</i>

Assignment: North eastern District

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Badge Number:

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Signature:	( all )	Rofel
Date:	5-6-	01

Name (printed):	CAROL	Bolyar	d
Badge Number:			
Assignment:			District

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Signature:	
Date:	5/40/

Name (printed):	beckbe'	DRAYTUNIA
Badge Number:	4873	
Assignment:	Police-Low	

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Signature: 5-7-05
PLEASE PRINT CLEARLY
Name (printed): William Brewster
Badge Number: 2203
Assignment: <u>Camins</u>

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Signature: Jonega Brook
Date: Ph. 124, 2008

Name (printed): LATONYA BROOK C
Badge Number: 5// $\supset$
· ·
Assignment:

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Signature:	h plin			
Date: 7 May 2008				
	PLEASE PRINT CLEARLY			
Name (printed):	PH L.D. BROWN			
Badge Number: 932				
Assignment: 0.0.	S.			

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Signature: ˌ	Beth Lohn Collet
Date:	4-24-08

Name (printed): _	Bethe	Johns	son-Ca	66.1
Badge Number:	155			
Assignment:	Northw	estern	Distria	4

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Signature.
Date: <u> </u>
PLEASE PRINT CLEARLY
Name (printed): ANtonio Carlisi
Badge Number: 7121
Assignment: ED

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Signature: Signature: Macatom

Date: 04-30.08

PLEASE PRINT CLEARLY

Name (printed): CYNTHIA L.CHEATOM

Badge Number: 4825

Assignment: S. W. DISTRICT

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Signature: 18 January 1964
Date: 5-7-08
PLEASE PRINT CLEARLY
Name (printed): (Elonica, hubbe
Badge Number:
Assignment:

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Signature: <u>ن ک ع ک</u>	louis
Date: <u>ধ রু প হ</u> স	
	PLEASE PRINT CLEARLY
Name (printed): Dev. J. 2	E CLARKY
Badge Number: 2704	
Assignment: Nwn	

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Signature: <u>Jun Ula</u>	aur
Date: 4-28-08	
	PLEASE PRINT CLEARLY
Name (printed): Robin	Cleaver
Badge Number: 4116	
Assignment: $\mathcal{N} \cdot \widetilde{\mathcal{E}} \cdot \mathcal{D}$	

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Signature:	
Date: 05/05/08	
Name (printed): ANDALL	PLEASE PRINT CLEARLY
	<u> </u>
Badge Number: 2753	
Assignment: Nw.D.	

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Signature	: Vocamar	y (	deman
Date:	04-24-0	\ <u>8</u>	

## PLEASE PRINT CLEARLY

Name (printed):	ROSEMARY	Coleman	<del></del>
Badge Number:	3177		<u> </u>
Assignment:	Dorthwe	Stern Dist	RICI

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Date: <u>05 - 6 - 08</u>
PLEASE PRINT CLEARLY
Name (printed): Makeia Collier
Badge Number: <u>153</u> ½
Assignment: Haman Resources/Recrueting

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Date: <u>5-6-08</u>
PLEASE PRINT CLEARLY
lame (printed): Adam Cook
Badge Number: <u>2833</u>
Assignment: <u>Garning</u>

Signature:

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orginature. Shares of City
Date: 04-24-08
PLEASE PRINT CLEARLY
Name (printed): PHILL & COOK
Badge Number: 2004
Assignment: NW D. STRICT

Signatura: 4 2 11 17 17 17

. . .

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I authorize, the law firm of Gregory, Moore, Jeakle, Heinen and Brooks, P.C., including but not limited to attorney Scott A. Brooks, 65 Cadillac Square, Suite 3727, Detroit, Michigan 48226 to represent me as counsel with respect to all claims under the FLSA, and other related laws which I have or may have against my employer. The authorization includes both an investigation of the validity of claims and any resulting litigation concerning such claims. The attorney(s) are authorized to file this consent on my behalf in an appropriate court and to take all steps pertinent thereto on my behalf, including, the filing of complaints, amended complaints, and other pleadings, and the settlement and collection of any and all such claims.

I hereby request that the court assess any, costs and expenses of this action and reasonable attorneys' fees against my employer, and award said costs, expenses and fees to my above—named counsel.

I understand that under the FLSA I cannot be discharged or in any way disciplined or penalized by my employer or its agents because of my participation in an FLSA lawsuit or because of my assertion of rights under the FLSA.

Signature:	mana Su	<u>raj</u>
Date:	5-7-08	
	<u>PLEAS</u>	E PRINT CLEARLY
Name (printed):	TAWAINA	CRAIG
Badge Number:	759	
Assignment:	GAMING	

Januari Chara-

424.5

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Signature: Winfox & Craig
Date:
PLEASE PRINT CLEARLY
Name (printed): WINSTON CRAIG
Badge Number: 274/
Assignment: GAMING

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Signature:	
Date: 092408	

#### PLEASE PRINT CLEARLY

Name (printed):	tatorcoa	Ann	Crawford
Badge Number: _	1310		
Assignment:	NWD		

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Date: 05-06-2008
PLEASE PRINT CLEARLY
Name (printed): Justin Dattilio
Badge Number: 107
Assignment: Tactical Mobile

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Signature:

Date:

PLEASE PRINT CLEARLY

Name (printed): HNDEEW LATTOC

Badge Number: \_\_/\_>\_

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Signature: Well and
Date: 4-30-08
PLEASE PRINT CLEARLY
Name (printed): William DAVIS
Badge Number: 4024
Assignment: Susi)

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Signature: Thomas & Summer &
Date: <u>5-5-08</u>

#### PLEASE PRINT CLEARLY

Name (printed): Thomas Lee Denmark	_
Badge Number: <u>398</u>	
Assignment: Southwestern District	

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Signature:
Date: 5 - 9 - 08
PLEASE PRINT CLEARLY
Name (printed): ARThur Dudal
Badge Number: 402
Assignment:GAMINT

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